

107TH CONGRESS
1ST SESSION

S. 1825

To authorize the Secretary of Commerce to provide financial assistance to the States of Alaska, Washington, Oregon, California, and Idaho and tribes in the region for salmon habitat restoration projects in coastal waters and upland drainages, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2001

Mrs. BOXER (for herself, Mr. CRAIG, Mr. CRAPO, Mr. WYDEN, Mr. SMITH of Oregon, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To authorize the Secretary of Commerce to provide financial assistance to the States of Alaska, Washington, Oregon, California, and Idaho and tribes in the region for salmon habitat restoration projects in coastal waters and upland drainages, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pacific Salmon Recov-
5 ery Act”.

1 **SEC. 2. SALMON CONSERVATION AND SALMON HABITAT**
2 **RESTORATION ASSISTANCE.**

3 (a) REQUIREMENT TO PROVIDE ASSISTANCE.—Sub-
4 ject to the availability of appropriations, the Secretary
5 shall provide financial assistance in accordance with this
6 Act to eligible States and eligible tribal governments for
7 conservation of salmon and salmon habitat restoration ac-
8 tivities.

9 (b) ALLOCATION.—Subject to section 3(f), of the
10 amounts available to provide assistance under this section
11 each fiscal year, the Secretary—

12 (1) shall allocate 85 percent among eligible
13 States, in equal amounts; and

14 (2) shall allocate 15 percent among eligible trib-
15 al governments, in amounts determined by the Sec-
16 retary.

17 (c) TRANSFER.—

18 (1) IN GENERAL.—The Secretary shall prompt-
19 ly transfer—

20 (A) to an eligible State that has submitted
21 and had approved an annual spending plan
22 under section 3(a) and a Salmon Conservation
23 and Salmon Habitat Restoration Plan approved
24 under section 3(b), amounts allocated to the eli-
25 gible State under subsection (b)(1); and

1 (B) to an eligible tribal government that
2 has submitted and had approved an annual
3 spending plan under section 3(a) and a memo-
4 randum of understanding under section 3(c),
5 amounts allocated to the eligible tribal govern-
6 ment under subsection (b)(2).

7 (2) TRANSFERS TO ELIGIBLE STATES.—The
8 Secretary shall make the transfer under paragraph
9 (1)(A)—

10 (A) to the Washington State Salmon Re-
11 covery Board, in the case of amounts allocated
12 to Washington;

13 (B) to the Oregon State Watershed En-
14 hancement Board, in the case of amounts allo-
15 cated to Oregon;

16 (C) to the California Department of Fish
17 and Game for the California Coastal Salmon
18 Recovery Program, in the case of amounts allo-
19 cated to California;

20 (D) to the Governor of Alaska, in the case
21 of amounts allocated to Alaska; and

22 (E) to the Office of Species Conservation,
23 in the case of amounts allocated to Idaho.

24 (d) REALLOCATION.—

1 (1) AMOUNTS ALLOCATED TO ELIGIBLE
2 STATES.—Amounts that are allocated to an eligible
3 State for a fiscal year shall be reallocated under sub-
4 section (b)(1) among the other eligible States, if—

5 (A) the eligible State does not have an an-
6 nual salmon spending plan approved under sec-
7 tion 3(a);

8 (B) the eligible State does not have in ef-
9 fect at the end of the first fiscal year after the
10 amounts have been allocated a Salmon Con-
11 servation and Salmon Habitat Restoration Plan
12 approved under section 3(b); or

13 (C) the amounts allocated remain unobli-
14 gated at the end of the year following the fiscal
15 year for which the amounts were allocated.

16 (2) AMOUNTS ALLOCATED TO ELIGIBLE TRIBAL
17 GOVERNMENTS.—Amounts that are allocated to an
18 eligible tribal government for a fiscal year shall be
19 reallocated under subsection (b)(2) to the other eligi-
20 ble tribal governments, if the eligible tribal
21 government—

22 (A) does not have an annual salmon spend-
23 ing plan approved under section 3(a); or

24 (B) has not entered into a memorandum of
25 understanding with the Secretary in accordance

1 with section 3(c) at the end of the fiscal year
2 following the fiscal year for which the amounts
3 were allocated.

4 **SEC. 3. RECEIPT AND USE OF ASSISTANCE.**

5 (a) ANNUAL SALMON SPENDING PLAN.—In order to
6 receive assistance under this Act, an eligible State or eligi-
7 ble tribe shall submit and have approved by the Secretary
8 an annual salmon plan which shall include a description
9 of the projects and programs that the State or tribe plans
10 to implement with the funds allocated. The Secretary shall
11 review a State or tribal plan within 90 days and provide
12 a State or tribe an opportunity to resubmit the plan if
13 necessary. Funds shall not be transferred to a State or
14 tribe until an annual salmon plan is approved.

15 (b) ELIGIBLE STATE SALMON CONSERVATION AND
16 RESTORATION PLAN.—

17 (1) IN GENERAL.—In order to receive assist-
18 ance under this Act, an eligible State shall submit
19 to the Secretary by the end of the first fiscal year
20 after the amounts have been allocated, and, not later
21 than 90 days after receipt of such a plan, the Sec-
22 retary shall approve or deny, a Salmon Conservation
23 and Salmon Habitat Restoration Plan that meets
24 the requirements of paragraph (3).

1 (2) NEGATIVE DETERMINATION.—If the Sec-
2 retary determines that a plan described in para-
3 graph (1) submitted by an eligible State does not
4 meet the requirements of paragraph (3), the Sec-
5 retary shall inform the State of the deficiencies of
6 the plan, and the State may resubmit the plan for
7 review by the Secretary.

8 (3) CONTENTS.—Each Salmon Conservation
9 and Salmon Habitat Restoration Plan shall, at a
10 minimum—

11 (A) be consistent with all applicable Fed-
12 eral laws;

13 (B) promote the recovery of salmon;

14 (C) except as provided in subparagraph
15 (D), give priority to use of assistance under this
16 Act for projects that—

17 (i) provide a direct and demonstrable
18 benefit to salmon or their habitat;

19 (ii) provide the greatest benefit to
20 salmon conservation and salmon habitat
21 restoration relative to the cost of the
22 projects; and

23 (iii) conserve and restore habitat
24 for—

1 (I) salmon that are listed as an
2 endangered species or threatened spe-
3 cies, proposed for such listing, or a
4 candidate for such listing, under the
5 Endangered Species Act of 1973 (16
6 U.S.C. 1531 et seq.); or

7 (II) salmon that are given special
8 protection under the laws or regula-
9 tions of the eligible State;

10 (D) in the case of a plan submitted by an
11 eligible State in which, on the date of enact-
12 ment of this Act, there is no area at which a
13 salmon species referred to in subparagraph
14 (C)(iii)(I) spawns—

15 (i) give priority to use of assistance
16 for projects referred to in clauses (i) and
17 (ii) of subparagraph (C) that contribute to
18 programs that prevent the decline of un-
19 listed species and that conserve species of
20 salmon that intermingle with, or are other-
21 wise related to, species referred to in sub-
22 paragraph (C)(iii)(I), which may include
23 (among other matters)—

24 (I) salmon habitat restoration;

1 (II) salmon supplementation and
2 enhancement only for the purposes of
3 restoring naturally reproducing salm-
4 on stocks and conserving salmon ge-
5 netic diversity;

6 (III) salmon-related research,
7 data collection, and monitoring; and

8 (IV) national and international
9 cooperative habitat programs; and

10 (ii) provide for revision of the plan
11 within 1 year after any date on which any
12 salmon species that spawns in the eligible
13 State—

14 (I) is listed as an endangered
15 species or threatened species;

16 (II) is proposed for such listing;

17 or

18 (III) becomes a candidate for
19 such listing, under the Endangered
20 Species Act of 1973 (16 U.S.C. 1531
21 et seq.);

22 (E) establish specific goals and time lines
23 for activities funded with assistance under this
24 Act;

1 (F) include measurable criteria by which
 2 such activities may be evaluated;

3 (G) require that activities carried out with
 4 such assistance shall—

5 (i) contribute to the conservation and
 6 recovery of salmon;

7 (ii) be scientifically based in accord-
 8 ance with the requirements prescribed by
 9 the Secretary under section 4;

10 (iii) be cost-effective; and

11 (iv) not be conducted on private land,
 12 except with the consent of the owner of the
 13 land; and

14 (H) consider whether activities funded
 15 under this Act will have long-term benefits
 16 based, in part, on consideration of upstream or
 17 downstream activities or activities occurring
 18 elsewhere in the watershed.

19 (4) SUBMISSION OF REGIONAL PLANS.—If the
 20 State is unable to complete a comprehensive state-
 21 wide Salmon Conservation and Restoration Plan
 22 within the timeframe established in section 3(b) the
 23 State may submit 1 or more Plans covering distinct
 24 regions within the State. Funding shall only be

1 available for States or regions within the State for
 2 which there is an approved Plan.

3 (c) MEMORANDUM OF UNDERSTANDING BETWEEN
 4 TRIBAL GOVERNMENT AND THE SECRETARY.—

5 (1) IN GENERAL.—To receive assistance under
 6 this Act, an eligible tribal government shall—

7 (A) have an approved annual spending
 8 plan; and

9 (B) enter into a memorandum of under-
 10 standing with the Secretary regarding use of
 11 the assistance by the end of the second fiscal
 12 year after the amounts have been allocated.

13 (2) CONTENTS.—Each memorandum of under-
 14 standing shall, at a minimum—

15 (A) be consistent with all applicable Fed-
 16 eral laws;

17 (B) be consistent with the goal of recov-
 18 ering salmon;

19 (C) give priority to use of assistance under
 20 this Act for activities that—

21 (i) provide a direct and demonstrable
 22 benefit to salmon or their habitat;

23 (ii) provide the greatest benefit to
 24 salmon conservation and salmon habitat

1 restoration relative to the cost of the
2 projects; and

3 (iii) conserve and restore habitat
4 for—

5 (I) salmon that are listed as an
6 endangered species or threatened spe-
7 cies, proposed for such listing, or a
8 candidate for such listing, under the
9 Endangered Species Act of 1973 (16
10 U.S.C. 1531 et seq.); or

11 (II) salmon that are given special
12 protection under the resolutions, ordi-
13 nances, or regulations of the eligible
14 tribal government;

15 (D) in the case of a memorandum of un-
16 derstanding entered into by an eligible tribal
17 government for an area in which, as of the date
18 of enactment of this Act, there is no area at
19 which a salmon species referred to in subpara-
20 graph (C)(iii)(I) spawns—

21 (i) give priority to use of assistance
22 for projects referred to in clauses (i) and
23 (ii) of subparagraph (C) that contribute to
24 programs described in subsection
25 (a)(3)(D)(i); and

1 (ii) include a requirement that the
2 memorandum shall be revised within 1
3 year after any date on which any salmon
4 species that spawns in the area—

5 (I) is listed as an endangered
6 species or threatened species;

7 (II) is proposed for such listing;

8 or

9 (III) becomes a candidate for
10 such listing, under the Endangered
11 Species Act of 1973 (16 U.S.C. 1531
12 et seq.);

13 (E) establish specific goals and time lines
14 for activities funded with assistance under this
15 Act;

16 (F) include measurable criteria by which
17 such activities may be evaluated;

18 (G) establish specific requirements for re-
19 porting to the Secretary by the eligible tribal
20 government; and

21 (H) require that activities carried out with
22 such assistance shall—

23 (i) contribute to the conservation or
24 recovery of salmon;

- 1 (ii) be scientifically based, in accord-
- 2 ance with the requirements prescribed by
- 3 the Secretary under section 4;
- 4 (iii) be cost-effective; and
- 5 (iv) not be conducted on private land,
- 6 except with the consent of the owner of the
- 7 land.

8 (d) ELIGIBLE ACTIVITIES.—

9 (1) IN GENERAL.—Assistance under section 2
 10 may be used by an eligible State in accordance with
 11 a plan approved under section 3(b), or by an eligible
 12 tribal government in accordance with a memo-
 13 randum of understanding entered into by the gov-
 14 ernment under section 3(c), to carry out or make
 15 grants or provide loans to carry out, among other
 16 activities—

17 (A) protection and restoration of salmon
 18 habitat, including riparian areas;

19 (B) acquisition from willing sellers of con-
 20 servation easements for riparian habitat protec-
 21 tion;

22 (C) watershed evaluation, assessment, and
 23 planning necessary to develop a site-specific and
 24 clearly prioritized plan to implement watershed

1 improvements, including for making multiyear
2 grants;

3 (D) research and collection of data on
4 salmon, and monitoring of salmon and salmon
5 habitat;

6 (E) salmon supplementation and enhance-
7 ment projects only for the purposes of restoring
8 naturally reproducing salmon stocks and con-
9 serving salmon genetic diversity;

10 (F) maintenance and monitoring of
11 projects completed with assistance under this
12 Act;

13 (G) technical training and education
14 projects, including teaching private landowners
15 about practical means of improving land and
16 water management practices to contribute to
17 the conservation and restoration of salmon
18 habitat; and

19 (H) other activities related to conservation
20 of salmon and salmon habitat restoration.

21 (2) PEER REVIEW.—Eligible science-based ac-
22 tivities in paragraph (1) shall be validated through
23 a peer review process that satisfies the requirements
24 prescribed by the Secretary under section 4.

1 (3) COLUMBIA RIVER BASIN.—Funds allocated
2 to eligible States and tribal governments for projects
3 or activities located within the Columbia River Basin
4 shall be used in a manner consistent with the North-
5 west Power Planning Council’s Columbia River
6 Basin Fish and Wildlife Program.

7 (e) USE OF ASSISTANCE FOR ACTIVITIES OUTSIDE
8 JURISDICTION OF RECIPIENT.—

9 (1) ASSISTANCE TO STATES.—Assistance under
10 this Act provided to an eligible State only may be
11 used for activities within that State’s borders.

12 (2) ASSISTANCE TO TRIBAL GOVERNMENTS.—
13 Assistance under this Act provided to an eligible
14 tribal government may be used for activities con-
15 ducted within the borders of its resident State (or
16 States).

17 (f) COST-SHARING BY ELIGIBLE STATES.—

18 (1) IN GENERAL.—An eligible State shall pro-
19 vide 25 percent non-Federal match, in the aggre-
20 gate, of any financial assistance provided to the eli-
21 gible State for a fiscal year under this Act. The non-
22 Federal match may be in the form of monetary con-
23 tributions or in-kind contributions of services for
24 projects carried out with assistance under this Act.
25 For purposes of this paragraph, monetary contribu-

1 tions by the State shall not be considered to include
 2 funds received from other Federal sources.

3 (2) LIMITATION ON REQUIREMENT FOR MATCH-
 4 ING FUNDS.—The Secretary may not require an eli-
 5 gible State to provide matching funds for each
 6 project carried out with assistance under this Act.

7 (3) TREATMENT OF MONETARY CONTRIBU-
 8 TIONS.—For purposes of subsection (a)(3)(H), the
 9 amount of monetary contributions by an eligible
 10 State under this subsection shall be treated as ex-
 11 penditures from non-Federal sources for salmon con-
 12 servation and salmon habitat restoration programs.

13 (4) BONNEVILLE POWER ADMINISTRATION FISH
 14 AND WILDLIFE FUNDING.—Funds collected by the
 15 Bonneville Power Administration from electricity
 16 ratepayers and allocated to eligible States and tribal
 17 governments for fish and wildlife activities shall not
 18 be considered to be funds from a Federal source
 19 under this Act.

20 (g) SUPPLEMENTATION OF STATE AND TRIBAL
 21 FUNDING.—An eligible State or tribal government shall
 22 maintain its aggregate expenditures of funds from non-
 23 Federal sources for salmon and salmon habitat restoration
 24 programs at or above the average annual level of such ex-
 25 penditures in the 2 fiscal years preceding the date of en-

1 actment of this Act or \$10,000,000 for each fiscal year,
2 whichever is less.

3 (h) COORDINATION OF ACTIVITIES.—Each eligible
4 State and each eligible tribal government receiving assist-
5 ance under this Act is encouraged to carefully coordinate
6 the salmon conservation activities of that State or tribal
7 government to—

8 (1) eliminate duplicative and overlapping activi-
9 ties; and

10 (2) provide consideration of upstream or down-
11 stream activities or activities occurring elsewhere in
12 the watershed that may impact the efficacy of res-
13 toration efforts.

14 (i) LIMITATIONS ON USE OF FUNDS.—

15 (1) ADMINISTRATIVE EXPENSES.—

16 (A) FEDERAL ADMINISTRATIVE EX-
17 PENSES.—Of the amounts available to carry out
18 this Act for a fiscal year, not more than 1 per-
19 cent may be used by the Secretary for adminis-
20 trative expenses incurred in carrying out this
21 Act.

22 (B) STATE AND TRIBAL ADMINISTRATIVE
23 EXPENSES.—Of the amount allocated under
24 this Act to an eligible State or eligible tribal
25 government each fiscal year, not more than 3

1 percent may be used by the eligible State or eli-
2 gible tribal government, respectively, for admin-
3 istrative expenses incurred in carrying out this
4 Act.

5 (2) ACTIVITIES REQUIRED FOR ENVIRON-
6 MENTAL PERMIT.—No funds available to carry out
7 this Act may be used by a private entity for activi-
8 ties that would otherwise be required as a condition
9 or requirement of a Federal, State, or local environ-
10 mental permit.

11 **SEC. 4. PEER REVIEW REQUIREMENTS.**

12 (a) IN GENERAL.—Not later than 1 year after the
13 date of enactment of this Act, the Secretary shall prescribe
14 the requirements for expedited peer review of science-
15 based activities contained in the annual spending plan for
16 each eligible State or tribal government. In order to
17 achieve salmon recovery throughout the coastal salmon's
18 range, each plan shall be considered separately on its own
19 merits.

20 (b) CONTENT.—The requirements for expedited peer
21 review shall include the following:

22 (1) PANELS.—Establishment of sufficient peer
23 review panels, as determined by the Secretary, to
24 achieve timely peer review of activities contained in
25 the annual spending plan. The number of members,

1 qualifications for membership, and procedure for se-
2 lection of members for each panel shall be substan-
3 tially in the same manner as the peer review panel
4 provided for under section 4(h)(10)(D) of the Pacific
5 Northwest Electric Power Planning and Conserva-
6 tion Act (16 U.S.C. 839b(h)(10)(D)).

7 (2) NECESSARY INFORMATION.—A description
8 of the information that must be provided to the peer
9 review panel in order to evaluate the activities. Each
10 State’s Salmon Conservation and Salmon Habitat
11 Restoration Plan and each tribal government’s
12 memorandum of understanding shall establish the
13 mechanism for providing needed information to the
14 peer review panel.

15 (3) REVIEW OF PROPOSED ACTIVITIES.—Re-
16 view, by the panels, of activities proposed for fund-
17 ing with assistance under this Act, within the time
18 prescribed by the Secretary.

19 (4) DETERMINATION AND RECOMMENDA-
20 TIONS.—Submittal of the peer review panel’s deter-
21 minations and recommendations regarding the ac-
22 tivities within each State’s or tribe’s annual spend-
23 ing plan to the Secretary, in order to be considered
24 by the Secretary in approving or disapproving the
25 annual spending plan, in accordance with the provi-

1 sions of section 3(a). States or tribes shall be pro-
2 vided an opportunity to resubmit any plan, if nec-
3 essary, or to propose alternative projects within their
4 respective jurisdictions.

5 (c) INTERIM FUNDING.—An eligible State or tribal
6 government may receive funding under this Act prior to
7 the finalization by the Secretary of the peer review re-
8 quirements under this section.

9 (d) PEER REVIEW FUNDING.—The Secretary shall
10 pay the expenses incurred by peer review panels in an
11 amount not to exceed \$500,000 a year from the adminis-
12 trative costs described in section 3(i)(1)(A).

13 **SEC. 5. PUBLIC PARTICIPATION.**

14 (a) ELIGIBLE STATES.—Each eligible State seeking
15 assistance under this Act shall establish a citizen advisory
16 committee or provide a similar forum for local govern-
17 ments and the public to participate in obtaining and using
18 the assistance, as well as in the development of the State
19 Salmon Conservation and Restoration Plan. Each eligible
20 State receiving assistance under this Act shall hold public
21 meetings to receive recommendations on the use of the as-
22 sistance.

23 (b) ELIGIBLE TRIBAL GOVERNMENTS.—Each eligible
24 tribal government receiving assistance under this Act shall

1 hold public meetings to receive recommendations on the
2 use of the assistance.

3 **SEC. 6. CONSULTATION NOT REQUIRED.**

4 Consultation under section 7 of the Endangered Spe-
5 cies Act of 1973 (16 U.S.C. 1536) shall not be required
6 based solely on the provision of financial assistance under
7 this Act. Projects or activities that affect listed species
8 shall remain subject to applicable provisions of the Endan-
9 gered Species Act of 1973.

10 **SEC. 7. REPORTS.**

11 Each eligible State and tribal government shall, not
12 later than December 31 of the second year in which
13 amounts are available to carry out this Act, and every 2
14 years thereafter, submit to the Secretary a biennial report
15 on the use of financial assistance received by the eligible
16 State or tribal government under this Act. The report
17 shall contain an evaluation of the success of that State
18 or tribal government in meeting the criteria listed in sec-
19 tion 3 (b) and (c), whichever is applicable.

20 **SEC. 8. DEFINITIONS.**

21 In this Act:

22 (1) INDIAN TRIBE.—The term “Indian tribe”
23 has the meaning given that term in section 4(e) of
24 the Indian Self-Determination and Education Assist-
25 ance Act (25 U.S.C. 450b(e)).

1 (2) ELIGIBLE STATE.—The term “eligible
2 State” means each of the States of Alaska, Wash-
3 ington, Oregon, California, and Idaho.

4 (3) ELIGIBLE TRIBAL GOVERNMENT.—The
5 term “eligible tribal government” means—

6 (A) a federally recognized tribal govern-
7 ment of an Indian tribe in Alaska, Washington,
8 Oregon, California, or Idaho that the Secretary,
9 in consultation with the Secretary of the Inte-
10 rior, determines—

11 (i) is involved in salmon management
12 and recovery activities under the Endan-
13 gered Species Act of 1973 (16 U.S.C.
14 1531 et seq.); and

15 (ii) has the management and organi-
16 zational capability to maximize the benefits
17 of assistance provided under this Act; or

18 (B) an Alaska Native village or regional or
19 village corporation, as defined in or established
20 pursuant to the Alaska Native Claims Settle-
21 ment Act (43 U.S.C. 1601 et seq.), or a feder-
22 ally recognized tribe in Alaska, that the Sec-
23 retary, in consultation with the Secretary of the
24 Interior, determines—

1 (i) is involved in salmon conservation
2 and management; and

3 (ii) has the management and organi-
4 zational capability to maximize the benefits
5 of assistance provided under this Act.

6 (4) SALMON.—The term “salmon” means any
7 naturally produced salmonid or naturally produced
8 trout of the following species:

9 (A) Coho salmon (*oncorhynchus kisutch*).

10 (B) Chinook salmon (*oncorhynchus*
11 *tshawytscha*).

12 (C) Chum salmon (*oncorhynchus keta*).

13 (D) Pink salmon (*oncorhynchus*
14 *gorbuscha*).

15 (E) Sockeye salmon (*oncorhynchus nerka*).

16 (F) Steelhead trout (*oncorhynchus*
17 *mykiss*).

18 (G) Sea-run cutthroat trout (*oncorhynchus*
19 *clarki clarki*).

20 (H) For purposes of applying this Act to
21 Oregon, the term “salmon” also includes—

22 (i) lahontan cutthroat trout
23 (*oncorhynchus clarki henshawi*); and

24 (ii) bull trout (*salvelinus confluentus*).

1 (I) For purposes of applying this Act to
2 Washington and Idaho, the term “salmon” also
3 includes bull trout (*salvelinus confluentus*).

4 (5) SECRETARY.—The term “Secretary” means
5 the Secretary of Commerce.

6 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated
8 \$350,000,000 for each of the fiscal years 2002 through
9 2007 to carry out the provisions of this Act. Any funds
10 appropriated pursuant to this Act shall remain available
11 until expended.

○